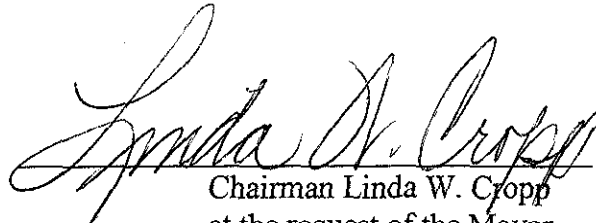


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

  
Chairman Linda W. Cropp  
at the request of the Mayor

A BILL

---

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

---

To prohibit certain predatory lending practices and abuses that injure District residents with respect to residential mortgage loans and to repeal the Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protections from Predatory Lending Revision Act of 2002".

**TITLE I. DEFINITIONS.**

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) "Annual percentage rate" means the annual percentage rate for the mortgage loan calculated according to the provisions of the federal Truth-in-Lending Act (Pub. L. 90-321; 15 U.S.C. § 1601 et seq.), the regulations promulgated there under by the Board of Governors of the Federal Reserve System, and the official staff commentary thereto, each, as may be amended or recodified from time to time.

(2) "Assessed value" means the full market value of real property for assessment and taxation purposes as determined by the Office of Tax and Revenue and in effect on the applicable date.

1 (3) "Bona fide loan discount points" means loan discount points which are knowingly paid  
2 by the borrower for the express purpose of reducing, and which in fact result in the same or lower  
3 annual percentage rate than there would have been without the loan discount points.

4 (4) "Borrower" means each accommodation party, borrower, co-borrower, cosigner, co-  
5 maker, obligor, mortgagor or guarantor obligated to repay a loan that is secured by a lien  
6 instrument.

7 (5) "Bridge loan" means a loan that has a term of less than one year and that only requires  
8 that payments of interest be made until such time as the entire unpaid balance is due (such as on the  
9 maturity date).

10 (6) "Commissioner" means the Commissioner of the Department of Banking and Financial  
11 Institutions or his or her authorized designee.

12 (7) "Covered loan" means a mortgage loan, secured by property located in the District of  
13 Columbia, including an open-end line of credit but not including a mortgage loan insured or  
14 guaranteed by a state or local authority, the District of Columbia Housing Finance Agency, the  
15 Federal Housing Administration or the Department of Veteran Affairs or a reverse mortgage  
16 transaction, in which the terms of the mortgage loan exceed one or more of the following  
17 thresholds:

18 (A) The loan is secured by a first mortgage on the borrower's principal dwelling and  
19 the annual percentage rate at consummation, calculated to include any lower introductory rate and  
20 including without limitation any points and/or bona fide discount points, will exceed by more than  
21 7 percentage points the yield on United States Treasury securities having comparable periods of  
22 maturity to the loan maturity measured as of the 15th day of the month immediately preceding the  
23 month in which the application for the residential mortgage loan is received by the lender;

24 (B) The loan is secured by a junior mortgage on the borrower's principal dwelling  
25 and the annual percentage rate at consummation, calculated to include any lower introductory rate  
26 and including without limitation any points and/or bona fide discount points, will exceed by more  
27 than 8 percentage points the yield on United States Treasury securities having comparable periods  
28 of maturity to the loan maturity measured as of the 15th day of the month immediately preceding  
29 the month in which the application for the residential mortgage loan is received by the lender; or

30 (C) The origination/discount points and fees payable by the borrower at or before  
31 loan closing exceed 6 percent of the total loan amount.

1 (8) "Department" means the Department of Banking and Financial Institutions.

2 (9) "District" means the District of Columbia.

3 (10) "Gross income" means a borrower's gross income as set forth in a mortgage loan  
4 application and by a borrower, the borrower's financial statement, a credit report, financial  
5 information provided to the lender or on behalf of the borrower or as determined by any other  
6 reasonable means available to a lender. A lender may conclusively rely upon a signed statement of  
7 the borrower for purposes of determining gross income, provided that the borrower certifies the  
8 accuracy of the statement of his or her income and provides documentation that evidences such  
9 gross income.

10 (11) "Lender" means any person to whom the obligation is initially payable, either on the  
11 face of the note or contract, or by agreement when there is no note or contract. The term "lender"  
12 shall include a mortgage broker, obligee, or mortgagee. The term "lender" shall not include the  
13 Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

14 (12) "Lien instrument" means a deed of trust, mortgage, security agreement, trust deed,  
15 land installment contract, contract for a deed, assignment of lease, rent, profit or any other  
16 conveyance or retention of an interest in real property or personal property related to real property,  
17 including cooperative housing units and garage spaces, which secures the performance of a note or  
18 other obligation and creates a lien on real property or security interest in personal property. The  
19 term "lien instrument" includes an amendment, modification, supplement, replacement or  
20 restatement of a lien instrument.

21 (13) "Median family income" means the median family income for the Washington, D.C.  
22 Metropolitan Statistical Area as defined by the Director of the United States Office of Management  
23 and Budget.

24 (14) "Mortgage broker" shall have the same meaning as prescribed in section 2(10) of the  
25 Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-55; D.C.  
26 Official Code § 26-1101(10)).

27 (15) "Mortgage loan" means any loan or other extension of credit to a natural person  
28 primarily for personal, family or household purposes that is secured by a lien instrument secured, in  
29 whole or in part, by residential real property located within the District of Columbia which there is  
30 located or there is to be located a structure or structures, intended principally for occupancy of from  
31 one to four families, which is or will be occupied by the borrower as the borrower's principal

dwelling, and the principal amount of the loan does not exceed the conforming loan size limit for a comparable dwelling as established and revised from time to time by the Federal National Mortgage Association or the Federal Home Loan Corporation. For purposes of this act, a "mortgage loan" shall not include an extension of credit for the purpose of financing the acquisition or initial construction of a borrower's residential real property.

(16) "Note" means a promissory note secured by a deed of trust, a promissory note or mortgage bond secured by a mortgage, or any other written evidence of indebtedness or obligation secured by a lien instrument.

(17) "Notice" means a written notice that describes with reasonable clarity the specific act, event, or default and the response that the notice sender is seeking from the addressee or other party obligated to the sender of the notice.

(18) "Origination/discount points and fees" means the points and fees as defined in section 226.32(b) of Title 12 of the Code of Federal Regulations.

(19) "Person" means an individual, corporation, governmental subdivision or agency, business trust, estate, trustee for a trust, partnership, association, limited liability company, joint venture, government, or any other legal or commercial entity or agent.

(20) "Point" means 1% when referring to a portion of a loan amount.

(21) "Principal balance" means the principal amount of a promissory note.

(22) "Real property" means real property in the District of Columbia and interests in real property located in the District of Columbia, including the stock of a cooperative housing corporation and associated residential lease of a cooperative housing unit or garage space.

(23) "Red Flag Warning Disclosure Notice" means the notice required by section 201 of this act.

(24) "Residential real property" means real property in the District of Columbia improved by:

(A) A one to 4 family dwelling, including a condominium or cooperative housing unit; or

(B) A mixed-use building with an assessed value of \$1 million or less containing one to 4 family dwelling units where the owner of the residential real property is one or more natural persons who occupy one of the dwelling units as the owner's principal dwelling or where

1 one of the dwelling units in good faith is intended to be occupied by a borrower who is one or more  
2 natural persons as the borrower's principal dwelling at the time of the loan closing.

3 (25) "Servicer" shall have the same meaning as prescribed in section 6(i)(2) of the federal  
4 Real Estate Settlement Procedures Act of 1974, as amended.

## 5 **TITLE II. PROHIBITED PRACTICES**

### 6 **Sec. 201. Insufficient repayment ability.**

7 (a) A lender that makes a covered loan when the borrower or borrowers considered  
8 collectively, at the time the covered loan is consummated would not reasonably be expected to  
9 make the scheduled payments required by the covered loan and required to repay the covered loan.  
10 *For purposes of making this determination:*

11 (1) The lender's determination of the ability of the borrower to make all the  
12 scheduled payments shall include the ability to make any payments for mortgage insurance  
13 premiums, escrow deposits, or direct payment of real estate taxes and property insurance premiums  
14 in addition to payments of interest, principal on the covered loan. In making its determination, a  
15 lender shall consider the employment status of the borrower or borrowers, and may consider the  
16 current and expected income, current obligations, and other financial resources of the borrower or  
17 borrowers (*other than the borrower's equity in the dwelling which secures repayment of the loan*);

18 (2) The lender shall not consider the borrower's equity interest in the residential  
19 real property which secures repayment of the covered loan in the determination of a borrower's  
20 ability to make the scheduled payments of interest, principal, mortgage insurance premiums, and all  
21 payments of escrow deposits for or direct payment of real estate taxes and property insurance  
22 premiums, prior to the scheduled maturity date of the covered loan; provided, that the borrower's  
23 equity interest in the residential real property which secures repayment of the covered loan may be  
24 considered by the lender when determining whether to approve the loan, as part of the evaluation of  
25 the borrower's likelihood of default;

26 (3) In the case of a covered loan which includes payment terms under which the  
27 aggregate amount of the scheduled payments will not fully amortize the outstanding principal  
28 balance, the lender's determination of the ability of the borrower to make an expected balloon  
29 payment at the scheduled maturity date may include consideration of the borrower's equity interest  
30 in the residential real property and the borrower's ability, based on current market conditions, to  
31 refinance the covered loan without penalty, hardship or material loss of equity;

1 (4) A lender shall not include or add a borrower to the covered loan who did not  
2 own or reside in the residential real property securing the covered loan prior to the covered loan  
3 transaction for the purpose of increasing the income and ability to make all the scheduled payments  
4 of interest, principal and mortgage insurance premiums, and all payments of escrow deposits for or  
5 direct payment of real estate taxes and property insurance premiums, of the borrowers owning or  
6 residing in the residential real property unless the included or added borrower separately confirms  
7 in writing to the lender that the borrower expects and commits to make or substantially contribute  
8 to:

9 (A) The scheduled payments on the covered loan; and

10 (B) All payments of escrow deposits for or direct payment of real estate  
11 taxes and property insurance premiums.

12 (b)(1) A borrower shall be presumed to be able to make the scheduled payments to repay  
13 the obligation, if, at the time the loan is consummated, or at the time of the first rate adjustment in  
14 the case of a lower introductory interest rate, the borrower's scheduled monthly payments do not  
15 exceed 50 percent of the borrower's monthly gross income as verified by the credit application, the  
16 borrower's financial statement, a credit report, financial information provided to the lender by or on  
17 behalf of the borrower, or any other reasonable means;

18 (2) The requirement of subsection (a) of this section shall only apply to borrowers  
19 whose income, as reported on the loan application, which the lender relied upon in making the  
20 credit decision, is no greater than 120% of the median family income. For purposes of this section,  
21 the median family income shall be derived from the most recent estimates made available by the  
22 U.S. Department of Housing and Urban Development, at the time the application is received. For  
23 purposes of determining median income, only the income of the borrower(s) shall be considered.

24 (c) The current and expected income and current debts of the borrowers must be verified by  
25 the lender in accordance with standard residential mortgage lending industry practices to  
26 underwrite a loan secured by a residential lien instrument. For the purposes of this subsection, the  
27 lender will be deemed to have followed standard residential mortgage lending industry practices if  
28 the lender verified the borrower's current and expected income and current debts in accordance  
29 with any of the Federal National Mortgage Association, Federal Home Loan Mortgage  
30 Corporation, U.S. Department of Housing and Urban Development, or U.S. Department of  
31 Veterans Affairs verification guidelines and practices. Nothing in this subsection shall preclude the

1 utilization of other standard industry verification practices accepted by applicable regulatory  
2 authorities.

3 Sec. 202. Restrictions on the financing of single-premium credit insurance.

4 A lender shall not sell any individual or group credit life, accident, health or unemployment  
5 insurance product on a prepaid single premium basis in conjunction with a covered loan. Such  
6 credit insurance sold by a lender that is sold on a basis other than a prepaid single premium shall be  
7 accompanied by a clear and conspicuous disclosure, provided at or before closing, to the effect that  
8 such credit insurance is not a condition to the extension or mortgage credit and that the borrower  
9 may elect to not purchase such insurance. Insurance premiums or debt cancellation or suspension  
10 fees calculated and paid on a monthly or bi-weekly basis shall not be considered financed by the  
11 lender, provided that the disclosure required in this subsection is provided to the borrower for any  
12 insurance, debt cancellation, or suspension services purchased by the borrower.

13 Sec. 203. Restriction on financing origination/discount points and fees.

14 (a) A lender may not finance, directly or indirectly, when refinancing a loan secured by the  
15 same residential real property to the same borrower which was made 12 months or less before the  
16 covered loan is made, any portion of the covered loan's origination/discount points and fees or  
17 other fees payable to the lender or any third party in excess of the greater of 3% of the new covered  
18 loan principal amount actually funded or \$400 or such higher amount as the Mayor may establish  
19 by regulation, excluding (a) reasonable charges described in subparagraphs (i), (iii), (iv), and (v) of  
20 section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, and (b) bona fide loan discount  
21 points.

22 Sec. 204. No encouragement of default.

23 A lender shall not recommend or encourage a borrower to default on an existing loan or  
24 other debt prior to and in connection with the closing or planned closing of a covered loan that  
25 refinances all or any portion of the existing loan or other debt.

26 Sec. 205. Unfair steering/improper use of credit scores.

27 (a) A lender shall not steer, counsel, or direct any prospective borrower to accept a loan  
28 product with a risk grade less favorable than the risk grade that the borrower would qualify for  
29 based on that lender's then current underwriting guidelines considering the information available to  
30 that lender, including the information provided by the borrower.

1 (b) A lender shall not make or cause to be made any false, deceptive, or misleading  
2 statement, representation, or determination regarding a borrower's or borrowers' ability to qualify  
3 for any mortgage product or the borrower's or borrowers' credit score.

4 (c) If a broker originates a covered loan, the broker shall not knowingly or intentionally  
5 steer, counsel, or direct any prospective borrower to accept a loan product at a higher cost than that  
6 for which the borrower could qualify.

7 Sec. 206. Failing to report favorable payment record.

8 A lender or its servicer shall report a borrower's favorable payment history and information  
9 to a nationally recognized credit-reporting agency at least once every 12 months. This section shall  
10 not prevent a lender or its servicer from agreeing with the borrower not to report payment history  
11 information and shall not apply to a lender with respect to a covered loan held or serviced by the  
12 lender for less than 90 days. Nothing in this section shall prevent a lender from reporting a  
13 borrower's unfavorable payment history.

14 Sec. 207. Home improvement contracts.

15 (a) A lender shall not pay a contractor under a home improvement contract from the  
16 proceeds of a covered loan other than by an instrument payable to the borrower or jointly payable  
17 to the borrower and the contractor or, at the election of the borrower, through a third-party escrow  
18 agent that is independent from the contractor in accordance with the terms established in a written  
19 agreement signed by the borrower, the lender and the contractor prior to the disbursement of funds  
20 to the contractor. The borrower shall be responsible for any reasonable fees or costs associated with  
21 such election. A lender shall be able to conclusively rely on a written statement from either the  
22 contractor or the third-party escrow agent that states that the escrow agent and contractor are  
23 independent from each other.

24 (b) A lender shall not purchase a home improvement contract in connection with, nor make  
25 an instrument payable to, a home improvement contractor that is not licensed with the District of  
26 Columbia pursuant to Chapter 28, Subchapter IV, Part A, Home Improvement Businesses, § 47-  
27 2883.01 et seq. of the District of Columbia Code. The Mayor shall maintain a list of home  
28 improvement contractors that are licensed. A lender who relies on such a list at the time the  
29 relationship with the contractor is established shall be deemed in compliance with this section,  
30 unless the lender has notice that the contractor is not licensed or authorized to do business in the  
31 District, provided that the lender has provided the Mayor with a name, telephone number, mailing



1 address, and electronic mail address of a contact person to whom the Mayor can provide updates or  
2 amendments to the list required by this subsection.

3 Sec. 208. No increase in interest rate upon default.

4 A lender shall not make a covered loan that includes a provision that increases the covered  
5 loan's interest rate upon a default. An increase in the covered loan's interest rate upon default shall  
6 not include interest rate increases with respect to an adjustable rate covered loan based on a  
7 recognized adjustable rate mortgage index and constant margin amount, so long as an event of  
8 default or the acceleration of the maturity date of the covered loan does not cause or permit the  
9 increase in the interest rate.

10 Sec. 209. Charges in bad faith.

11 A lender shall not charge and retain fees paid by the borrower in making a covered loan that  
12 are:

13 (1) For services that are not actually performed;

14 (2) For loan discount points which are not bona fide discount points; or

15 (3) In violation of the Real Estate Procedures Settlement Act, approved December  
16 22, 1974 (88 Stat. 1724; 12 USC 2601 et seq.).

17 Sec. 210. Failure to timely send disclosure notice.

18 (a) In making a covered loan, a lender shall send to the borrower or borrowers a Red Flag  
19 Warning disclosure notice.

20 (b) This notice must be sent to the borrower or borrowers within 3 business days after the  
21 lender receives the application for the loan or, if it cannot be reasonably determined whether the  
22 loan will be a covered home loan at the time of receipt of the application, within 3 days of  
23 determining that the loan will be a covered loan.

24 (c) If the loan is originated with the assistance of a mortgage broker, the mortgage broker  
25 shall be required to provide the disclosure notice required by this subsection.

26 (d) Only one disclosure notice must be provided to each borrower.

27 (e) The Mayor shall promulgate the Red Flag Warning disclosure notice and instructions  
28 for completing, executing and sending the disclosure. The Mayor may revise the disclosure notice  
29 or instructions at any time not less than 3 months advance publication in the D.C. Register. After  
30 the publication of a revised disclosure notice or revised instructions, either the existing or revised

1 instructions may be followed and either the existing or revised disclosure notice shall be accepted  
2 until the advance publication period expires.

3 Sec. 211. Prepayment premium, fee or charge.

4 A lender shall not include in a covered loan or collect or attempt to collect any prepayment  
5 premium, fee or charge in violation of section 1(f) of An Act To enact subtitle II, "Other  
6 Commercial Transactions", of Title 28, "Commercial Instruments and Transactions", of the District  
7 of Columbia Code, and for other purposes, approved August 30, 1964, (78 Stat. 667; D.C. Code §  
8 28-3301 et seq.).

9 Sec. 212. Limitations on balloon payments.

10 A lender shall not make a covered loan that provides for a scheduled payment that is more  
11 than twice as large as the average of earlier scheduled monthly payments unless such balloon  
12 payment becomes due and payable not less than 7 years after the date of such loan's closing. This  
13 section shall not apply when the payment schedule is adjusted to account for the seasonal or  
14 irregular income of the borrower, or if the purpose of the loan is a bridge loan connected with or  
15 related to the acquisition or construction of a dwelling intended to become the borrower's principal  
16 dwelling.

17 Sec. 213. No call provision.

18 A lender shall not make a covered loan that includes a call provision that permits the lender,  
19 in its sole discretion to accelerate the indebtedness of the covered loan, provided that this  
20 prohibition shall not apply when repayment of the covered loan has been accelerated by a bona fide  
21 default or pursuant to some other provision of the loan agreement unrelated to the payment  
22 schedule such as bankruptcy or receivership.

23 Sec. 214. No negative amortization.

24 A lender shall not make a covered loan that includes a payment schedule with regular  
25 periodic payments that cause the principal balance to increase.

26 Sec. 215. No advance payments.

27 A lender shall not make a covered loan that includes terms under which any periodic  
28 payments required under the loan are paid in advance from loan proceeds.

1           Sec. 216. No advance waivers of this section.

2           In making a covered loan, a lender shall not impose or include in any document relating to a  
3 covered loan a provision whereby a borrower waives a violation of this act in advance. An advance  
4 waiver provision that violates this section shall be deemed against public policy and void.

5           Sec. 217. No oppressive mandatory arbitration clause.

6           (a) In making a covered loan, a lender shall not include in any note, lien, instrument,  
7 ancillary lien instrument or obligation that evidences or secures a covered loan a mandatory  
8 arbitration clause that is:

9                   (1) Oppressive;

10                   (2) Unfair;

11                   (3) Unconscionable; or

12                   (4) Substantially in derogation of the rights of borrowers.

13           (b) Arbitration clauses that comply with the standards adopted by the Mayor pursuant to  
14 regulation shall be presumed not to violate this section. The Mayor's standards must be in  
15 accordance with the procedures of a nationally recognized arbitration forum such as the American  
16 Arbitration Association.

17           (c) An oppressive mandatory arbitration clause that violates this section shall be deemed  
18 against public policy and void.

19           Sec. 218. Home ownership counseling.

20           A lender shall inform a borrower of his or her right to obtain counseling in connection with  
21 a covered loan. The disclosure notice provided to a borrower in accordance with section 210 shall  
22 satisfy this requirement.

23           Sec. 219. Broker licensure.

24           (a) The Mayor shall maintain a list of mortgage brokers licensed and authorized to engage  
25 in business as a mortgage broker in the District. The list shall be available to mortgage lenders.

26           (b) A lender, upon initiation of a business relationship with a mortgage broker, shall verify  
27 that each mortgage broker with whom it does business in connection with making a covered loan  
28 holds a license or other authorization currently in effect to do business within the District. After  
29 verifying that the broker is licensed or authorized to do business within the District, the lender shall  
30 be entitled thereafter to rely upon a signed written statement by the mortgage broker to the effect  
31 that the mortgage broker is duly authorized to conduct business within the District unless the lender

1 has notice that the mortgage broker is not licensed or authorized to do business in the District,  
2 provided that the lender has provided the Mayor with a name, telephone number, mailing address,  
3 and electronic mail address of a contact person to whom the Mayor can provide updates or  
4 amendments to the list of licensed brokers.

5 Sec. 220. Filing requirements.

6 (a) Within 14 days following the funding of a covered loan, a lender shall submit to the  
7 Mayor a loan package including copies of the following documents:

8 (1) The settlement statement;

9 (2) The FP 7 Form filed with the District of Columbia Office of the Recorder of  
10 Deeds;

11 (3) The final Truth in Lending Act disclosure; and

12 (4) The note.

13 (b) In its transmittal of the loan package required by subsection (a) of this section, the  
14 lender shall certify that each of the documents provided are true copies of the original documents.

15 (c) The loan package submitted pursuant to subsection (a) of this section shall remain  
16 confidential and exempt from disclosure under any law except to the borrower, a lender involved in  
17 the covered loan transaction, or current note holder.

18 Sec. 221. Suspect settlement service providers.

19 The Mayor is hereby authorized to create and maintain a public list of lenders and other  
20 settlement service providers, including but not limited to, real estate agents and appraisers, who  
21 have been finally adjudicated in a court of competent jurisdiction to have committed fraud or  
22 illegal conduct.

23 Sec. 222. Median family income.

24 The Mayor shall periodically publish or make available to lenders median family income  
25 for the Washington, D.C. Metropolitan Statistical Area that may be relied upon by lenders for  
26 purposes of this bill.

### 27 TITLE III. VIOLATIONS AND REMEDIES; ENFORCEMENT AND CIVIL LIABILITY.

28 Sec. 301. Violations and remedies.

29 (a) The Mayor, Corporation Counsel, or any borrower to a covered loan may seek recovery  
30 of damages for a lender's violation of Title II of this act.

1 (b) Notwithstanding the foregoing, if the violation of Title II of this act was caused by any  
2 of the borrowers to the covered loan, their employers, or creditors providing materially incorrect  
3 information to the lender which the lender did not discover the inaccuracy of prior to the covered  
4 loan funding, then, so long as the lender reasonably attempted to verify the current and expected  
5 income and current debts of the borrowers in accordance with section 201(c) of this act, the lender  
6 shall not be liable for the violation of Title II of this act.

7 (c) In any suit instituted or maintained by a borrower who alleges that the lender violated  
8 Title II of this act, the presiding judge may, in the judge's discretion, award reasonable attorneys  
9 fees and costs to the lender, the reasonable attorneys fees and costs to be taxed as a part of the  
10 court costs and payable by the borrower, upon a finding by the presiding judge that the borrower  
11 instituting or maintaining the violation knew, or should have known, that the claim was frivolous or  
12 malicious.

13 (d) The Superior Court shall have original jurisdiction over claims and litigation arising  
14 under Title II of this act.

15 (e) Damages or other relief awarded to the borrowers under this section may include:

16 (1) Reformation of the covered loan in order to correct or remove an unfair term or a  
17 term obtained in violation of Title II of this act as of the date of initial funding;

18 (2) Actual damages;

19 (3) Injunctive relief;

20 (4) Reasonable attorneys' fees and costs;

21 (5) Statutory damages, provided that the court determines that the lender has  
22 engaged in a systematic pattern of practices or an egregious practice or act in violation of Title II  
23 and that the statutory damages shall not exceed 600% of the damages awarded under  
24 subsection (e)(2) of this section;; and

25 (6) Requiring the lender to contribute 50% of the statutory damages award and an  
26 amount equal to 10% of the monetary award to the Foreclosure Prevention Fund maintained by the  
27 Mayor.

28 (f) An action for violation of Title II of this act may be brought no later than 3 years after a  
29 violation of Title II of this act has been discovered or should have been discovered.

1 (g)(1) A lender making a covered loan who, when acting in good faith, fails to comply with  
2 Title II of this act, will not be deemed to have violated Title II of this act if the lender establishes  
3 one of the following:

4 (A) Without regard to who discovered the error, within 120 days of the  
5 covered loan initial funding and prior to the institution of judicial process under this section, the  
6 borrower was notified of the violation, appropriate restitution was made, and whatever adjustments  
7 are necessary were made to the covered loan, at the choice of the lender, to:

8 (i) Make the covered loan satisfy the requirements of Title II of this  
9 act; or

10 (ii) Make a material change in the terms of the covered loan  
11 beneficial to the borrowers.

12 (B) The violation resulted from a bona fide error, notwithstanding the  
13 lender's maintenance of procedures reasonably adapted to avoid such errors, and within 60 days  
14 after the discovery of the compliance failure and prior to the institution of judicial process under  
15 this section, the borrower was notified of the compliance failure, appropriate restitution was made,  
16 and whatever adjustments are necessary were made to the covered loan either, at the choice of the  
17 lender, to:

18 (i) Make the covered loan satisfy the requirements of Title II of this act; or

19 (ii) Make a material change in the terms of the covered loan beneficial to the  
20 borrowers.

21 (2) If the lender failed to comply with section 201(c), the lender shall not be deemed  
22 to have violated Title II of this act only if, in addition to satisfying subsection (A)(i) or (B)(ii) of  
23 subsection (1) of this section, the lender shall have provided the borrower with a disclosure notice  
24 before the covered loan closed and the failure to comply with section 210 shall not have been  
25 shown to be part of a pattern or practice of failing to comply with section 210.

26 (h) For the purposes of subsection (h) of this section, examples of a bona fide error include  
27 clerical, calculation, computer malfunction, programming, and printing errors. An error of legal  
28 judgment with respect to a lender's obligations under Title II of this act shall not constitute a bona  
29 fide error.

1 (i) No provision of this act shall be applied or interpreted to bar a borrower from bringing  
2 an action in an appropriate court of competent jurisdiction pursuant to any other District of  
3 Columbia or federal law for damages, injunctive relief or any other relief.

4 (j) The remedies provided in this act shall be the sole and exclusive remedies for any  
5 violation of any provision of this act.

6 (k) No lender or noteholder shall assert or rely on the defenses of a holder in due course  
7 described in section 2(d) of the Uniform Commercial Code-Negotiable Instruments Act of 1994,  
8 effective March 23, 1995 (D.C. Law 10-249; D.C. Official Code § 28:3-305), with respect to  
9 limiting liability under this title.

10 Sec. 302. Enforcement.

11 The Mayor may conduct examinations and investigations, and issue orders to enforce the  
12 provisions of this act, with respect to lenders over which it otherwise has jurisdiction. The Mayor  
13 may examine any relevant instrument, document, account, book, record or file of a lender over  
14 which the Mayor has jurisdiction. The Mayor may recover the reasonable cost of such  
15 examinations and investigations from the lender. A lender shall maintain its records in a manner  
16 that will facilitate the Mayor in determining whether the lender is complying with the provisions of  
17 the act and any regulations promulgated hereunder.

18 Sec. 303. Administrative penalties.

19 (a) If the Mayor determines that any person has violated the provisions of this act, the  
20 Mayor may impose any one or more of the following penalties:

21 (1) A civil penalty of up to \$1,000.00 for each violation and for each violation of an  
22 order issued pursuant to paragraph (2) of this subsection; or

23 (2) Order a person to cease and desist any violation of this act and to make  
24 restitution for actual damages to the borrower.

25 (b) If the Mayor determines that any person has a systematic pattern of violations of this  
26 act, the Mayor may impose any one or more of the following penalties in addition to the penalties  
27 set forth in subsection (a) above:

28 (1) Suspend, revoke or refuse to issue or renew any license issued by the Mayor;

29 (2) Prohibit or suspend an individual responsible for a violation of this act from  
30 working in his or her present capacity or in any other capacity related to the activities regulated by  
31 the Mayor; or

1 (3) Obtain an injunction or other process against any person to restrain and prevent  
2 the person from engaging in any activity violating this act.

3 Sec. 304. Final decisions.

4 A decision of the Mayor shall be a final order for the purposes of Title I of the District of  
5 Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official  
6 Code § 2-501 et seq.), as it may be amended or recodified from time to time, and shall be  
7 enforceable in a court of competent jurisdiction. The Mayor shall publish the final decisions,  
8 subject to redaction or modification to preserve confidentiality. Any person aggrieved by a final  
9 decision of the Mayor pursuant to this act may appeal the decision to the District of Columbia  
10 Superior Court.

11 TITLE IV. MISCELLANEOUS PROVISIONS.

12 Sec. 401. Rulemaking authority.

13 The Mayor shall promulgate rules, in accordance with the District of Columbia  
14 Administrative Procedure Act, approved October 12, 1968 (82 Stat. 1204; D.C. Official Code § 2-  
15 1501 et seq.), to carry out the purposes and functions of this act. The rules shall be promulgated  
16 within 90 days of the effective date of this act.

17 Sec. 402. Amendments and repealer.

18 (a) The Mortgage Lender and Broker Act of 1996, effective September 9, 1996, (D.C. Law  
19 11-55; D.C. Official Code § 26-1101 et seq.), is amended as follows:

20 (1) Section 3 (D.C. Official Code § 26-1102) is amended by striking paragraph (4).

21 (2) Section 11(b) (D.C. Official Code § 26-1110(b)) is amended to read as follows:

22 (i) Delete the word "and" after the semicolon in paragraph (1).

23 (ii) Delete the period at the end of the subparagraph (2)(D) and insert the  
24 phrase "; and" in its place.

25 (iii) Add a new paragraph to read as follows:

26 "(3) The number of loans brokered, originated, made, and serviced under the  
27 Protections from Predatory Lending Revision Act of 2001."

28 (3) Section 15 (D.C. Official Code § 26-1114) is amended as follows:

29 (A) By amending the lead-in language in subsection (a) by inserting the  
30 phrase "or person required to be licensed under this act" before the word "shall"; and

31 (B) By adding new paragraphs (9), (10), and (11) to read as follows:



1                   "(9) Make predatory loans or engage in predatory lending activities in  
2 violation of the Protections from Predatory Lending Revision Act of 2001;

3                   "(10) Purchase loans from an unlicensed mortgage broker or lender, unless  
4 the unlicensed mortgage broker or lender is exempted under section 3;

5                   "(11) Engage in the business as a mortgage lender or mortgage broker, or  
6 both, or hold himself or herself out to the public to be a mortgage lender or mortgage broker, or  
7 both, without a license under this act or an exemption under section 3."

8                   (4) Section 19 (D.C. Official Code § 26-1118) is amended as follows:

9                   (i) Add a new paragraph to read as follows: "(15) Found in violation of the  
10 Protections from Predatory Lending Revision Act of 2001 or determined by the Commissioner to  
11 have made a loan in violation of the Protections from Predatory Lending Revision Act of 2001. .

12                   (ii) Delete the entire phrase in subsection (b)(1) and insert the following  
13 phrase in its place: "The Commissioner may enforce the provisions of this section or any rules and  
14 regulations adopted by issuing an order against any licensee or person required to be licensed:".

15                   (b) Section 1804 of the Fiscal Year 1998 Revised Budget Support Act of 1998, effective  
16 March 20, 1998 (D.C. Law 12-60; D.C. Code § 26-802.4), is amended as follows:

17                   (1) Paragraph (4) is amended by striking the word and .

18                   (2) A new paragraph (4A) is added to read as follows:

19                   "(4A) Audit fees and other fees received under the Protections from Predatory  
20 Lending Revision Act of 2001;" and .

21                   (c) Section 20 (D.C. Official Code § 26-1119) is amended as follows:

22                   (1) Subsection (a) is amended to read as follows:

23                   "(a) Except as provided in subsection (d) of this section, the Commissioner shall  
24 give the licensee an opportunity for a hearing before the Commissioner takes any action under  
25 sections 18 or 19."; and

26                   (2) By adding a new subsection (d) to read as follows:

27                   "(d) If the Commissioner determines that an emergency condition exists that may  
28 endanger the public health or safety of the District of Columbia due to noncompliance with this act,  
29 the Commissioner may issue a temporary cease and desist order to require a licensee, or a person  
30 required to have a license, in violation of this act, to cease operations immediately; provided, that  
31 the duration of a temporary cease and desist order issued under this subsection shall not exceed 30

1 days and the order includes notice of a hearing within 30 days of the order to be held pursuant to  
2 subsection (b) and (c) of this section. Any person subject to a cease and desist order under this  
3 subsection may appeal the order within 15 days, but is required to comply with the order pending  
4 appeal.

5 (d) The Protections from Predatory Lending and Mortgage Foreclosure Improvements Act  
6 of 2000, effective April 3, 2001 (D.C. Law 13-263; 48 DCR 991), is repealed as of April 3, 2001.

## 7 TITLE V. FISCAL IMPACT STATEMENT

### 8 Sec. 501. Fiscal impact statement.

9 The Council adopts the fiscal impact statement in the committee report as the fiscal impact  
10 statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved  
11 December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

## 12 TITLE VI. APPLICABILITY

### 13 Sec. 601. Applicability.

14 This act shall apply to all covered loans, deeds of trust, mortgages, and other real property  
15 lending transactions, including the amendment, modification, supplement, or replacement of real  
16 property lending transactions closed 10 days after the effective date of the regulations promulgated  
17 by the Mayor.

## 18 TITLE VII. EFFECTIVE DATE

### 19 Sec. 701. Effective date.

20 This act shall take effect following approval by the Mayor (or in the event of veto by the  
21 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
22 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24,  
23 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
24 Columbia Register.